

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEFFREY WARREN SPINNEY,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 06-309 Erie

MEMORANDUM ORDER

AND NOW, this 23rd day of April, 2008, and upon de novo review, *nunc pro tunc*, of Plaintiff's Objections [Doc. No. 36] to Magistrate Judge Susan Paradise Baxter's report and recommendation dated February 28, 2008 [Doc. No. 32], recommending that Defendants' motion to dismiss or alternatively for summary judgment [Doc. No. 17] be granted in part and denied in part, the following order is entered:

The Court adopts the Report and Recommendation [Doc. No. 32] of Magistrate Judge Baxter, filed on February 28, 2008 as the opinion of the Court with the exception of the Magistrate Judge's dismissal of the negligence claim involving the application of the flex-cuffs. The Court finds that there are material issues of fact relative to that claim which renders its dismissal inappropriate.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge